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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,405	07/03/2003	Faith M. Oi	FLG-023DIV	4475
23717	7590	09/22/2004	EXAMINER	
LAW OFFICES OF BRIAN S STEINBERGER 101 BREVARD AVENUE COCOA, FL 32922			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
10/613,405	OI ET AL.	
Examiner	Art Unit	
Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 06 July 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 43-46, 48-51, 53-56, 58-64 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 43-46, 48, 50, 51, 53-56 and 61-63 is/are rejected.

7) Claim(s) 49, 58-60 and 64 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 44, 45, 46, 48, 50, 51, 53-56, and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,100,107 to Latta in view of U.S. Patent No. 3,700,687 to Hoffmann et al.

Regarding Claims 43, 50, and 56, Latta teaches alternating layers of a first layer (Latta Fig. 4 below ground left side of element #40) directly against a second layer (Latta Fig. 4 #40) which is directly against a third layer (Latta Fig. 4 below ground right side of element #40), the first layer and the third layer each being a mixture of a non-edible foraging matrix mixed including at least one of soil, sand, gravel, rocks, pebbles, shale, and mixtures (Latta #44); and the second layer being a non-toxic layer being an edible non-toxic attractant material (Latta abstract). Latta is silent on the non-edible foraging matrix being mixed with a slow-acting non-repellent toxicant. However, Hoffmann teaches it is old and notoriously well-known to apply a non-repellent toxicant to soil (Hoffmann Col. 5 line 29-30 and Col. 6 line 49 and 53). It would have been obvious knowledge to one of ordinary skill in the art to modify the teachings of Latta with the teachings of Hoffmann at the time of the invention to prevent termites from infesting

the fence post causing premature decay since it is old and notoriously well-known to apply toxicant in many forms (i.e. granules, spray, etc).

Regarding Claims 44 and 54, Latta as modified teaches the non-toxic layer includes cellulose (Latta abstract, wood).

Regarding Claims 45 and 55, Latta as modified is silent on the foam layer. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of a known material for intended use and is merely the selection of an alternate equivalent post component to achieve certain cost parameters or base on availability of raw materials.

Regarding Claims 46, 51, 53, and 61, Latta as modified inherently teaches an outer covering (i.e. grass).

Regarding Claim 48, Latta as modified inherently teaches a layer of air that the arthropods pass through to reach the first layer (since soil is porous and inherently contains air for root development etc).

Regarding Claims 62 and 63, Latta as modified is silent on the first layer and third layer are each approximately 0.25 inch thick or that the second layer is approximately 0.25 inch thick. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in size to accommodate different application areas.

***Allowable Subject Matter***

Claims 49, 58, 59, 60 and 64 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 43, 44, 45, 46, 48, 50, 51, 53-56, and 61-63 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

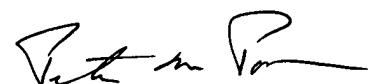
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

13 September 2004



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600

  
9/16/04